IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.293 OF 2005

Shri.Jingonda Vangonda Patil ..Petitioner

Vs.

Pandit Bharmappa Nitwe-Shastri and Ors. ..Respondents

....

Mr.A.J.Chougule for Petitioner

....

CORAM : B.H.MARLAPALLE,J.

DATE : APRIL 6,2005

P.C.:

1. Heard Mr.Chougule, the learned counsel for the Petitioner who is the appellant in R.C.A.No. 138 of 1995. In the said appeal, an application at Exh.145 was submitted by the Petitioner under Order 41 Rule 27 of CPC praying for leave to place on record additional documents. The said application has been rejected by the learned Vth Ad-hoc Additional District Judge at Kolhapur vide his order dated 19.10.2004 and hence, this petition.

2. In the application at Exh. 45, the petitioner had stated that none of the documents sought to be placed on record, were submitted before the trial Court in the suit decided and these documents were

relevant for deciding the appeal and if they were allowed to be taken on record, no prejudice was likely to be caused to the respondents.

3. The lower appellate Court observed that order 41 Rule 27 of CPC provided for production of additional evidence on any of the following three grounds:

. a) when the trial Court had refused to admit the evidence;

. b) the party who intended to produce documents establishes that after exercise of due diligence, he could not produce such evidence as it was not within his knowledge;

. c) The appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause.

4. It was further noted by the lower appellate Court that the appellant had moved application for amendment at Exh.33 for amending the written statement to the effect that he himself and his brother and other family members were residing in the suit premises and some part of the premises in their possession was taken over by the Appellant. This

amendment application was disallowed and the documents sought to be produced vide the application Exh.45 were in support of the plea raised in the amendment application which was turned down. The lower appellate Court therefore recorded findings that the documents were not relevant and they were not covered by any of the clauses of Order 41 Rule 27 of the CPC. The reasons so recorded by the lower Appellate Court cannot be termed as perverse or manifestly erroneous so as to cause interference in a petition under Article 227 of the Constitution of India.

5. The petition is rejected summarily.

[B.H.MARLAPALLE,J.]